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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL  
LITIGATION

Case No. 4:20-cv-03919-CW

**JOINT MOTION FOR APPROVAL OF  
ADDITIONAL SETTLEMENT CLASS  
COMMUNICATIONS**

Judge: Hon. Claudia Wilken

1 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs and Defendants  
2 National Collegiate Athletic Association (NCAA), Atlantic Coast Conference (ACC), The Big Ten  
3 Conference, Inc. (Big Ten), The Big 12 Conference, Inc. (Big 12), Pac-12 Conference (Pac-12),  
4 and Southeastern Conference (SEC) hereby move for an order approving publication of the  
5 attached communication to potential Class Members. *See* Question and Answer: Impact of the  
6 Proposed Settlement on Current Division I Student-Athletes, NCAA (Dec. 13, 2024) (attached  
7 hereto as **Exhibit A**).

8 Since the Court preliminarily approved the Settlement, student-athletes have frequently  
9 approached the NCAA, the Conferences, and the NCAA's member institutions with clarifying  
10 questions about the settlement. Because the NCAA is a defendant in this lawsuit, it has been  
11 unable to answer such questions directly. But the questions are of the type that would typically be  
12 answered by question-and-answer (Q & A) documents posted to the NCAA's website. To help  
13 answer these questions in an easily-accessible way, the NCAA has prepared a Q & A document  
14 addressing commonly-asked questions about the settlement. Both Class Counsel and Defendants  
15 agree that the Q & A provides truthful and non-misleading information to potential Class Members  
16 and that the NCAA is uniquely situated to ensure that such information is even more widely  
17 disseminated to the benefit of potential Class Members. The parties accordingly jointly request  
18 that the Court approve publication of the Q & A document.

### 19 BACKGROUND

20 On October 7, 2024, the Court granted preliminary approval of the Settlement and directed  
21 notice to potential Class Members. *See* Dkt. No. 544. Since then, there has naturally been much  
22 public discussion about the pending Settlement and how it would operate if approved, which has  
23 led to frequent questions by student-athletes. Because the NCAA is a defendant in this case, it has  
24 not followed its usual practice of attempting to answer such questions broadly and publicly with  
25 Q & A documents developed in conjunction with NCAA committees (including student-athletes)  
26 and the Conference Defendants. But both student-athletes and the NCAA's member institutions  
27 have requested that such guidance be made more broadly available.

At the same time, and as the Court’s recent protective order granting Plaintiffs’ Motion for a Prospective Order Concerning Misleading Third-Party Claims Filing Services details, some third parties have sent misleading communications and solicitations to potential Class Members about the pending Settlement. *See* Dkt. No. 576 at 2 (“[T]he Court is concerned that certain solicitations of class members regarding third-party claims filing services have been misleading”). The Court’s recent Order is a meaningful and important step to correct these misimpressions.

Class Counsel and Defendants agree that under the circumstances, it would be helpful for potential Class Members to receive even more truthful and accurate information about the Settlement. Accordingly, the NCAA prepared a Q & A document addressing the most commonly-asked questions from student-athletes. Those questions are:

- “Will all student-athletes receive name, image and likeness (NIL) payments from their school?”
- “If a school provides additional benefits or NIL payments, will all student-athletes at a particular school or on a particular team receive the same amount of NIL payments or benefits from the school?”
- “Is a student-athlete’s athletics scholarship guaranteed?”
- “Is a student-athlete’s roster spot guaranteed?”
- “Do student-athletes need to disclose all NIL agreements?”
- “May student-athletes sign an NIL agreement with anyone?”
- “How do student-athletes know if an individual or company is an ‘associated individual or entity’?”
- “Who determines whether the money provided by an associated entity or individual is at a fair market rate?”
- “What can schools do to help student-athletes find NIL opportunities?”
- “Can student-athletes sign NIL agreements with schools *AND* outside third parties?”
- “Are there any other restrictions on schools that student-athletes should be aware of?”
- “Where can student-athletes go if they have questions about participation in the

1 settlement?”

- 2 • “Where can student-athletes go if they have questions about the Division I NIL  
3 environment?”

4 Ex. A at 1–3.

5 Class Counsel and Defendants have conferred about the Q & A document and jointly  
6 believe the contents provide truthful and accurate information about the Settlement. The parties  
7 further believe it will benefit potential Class Members for such information to be even more  
8 broadly disseminated than it already has been.

### 9 ARGUMENT

10 Federal Rule of Civil Procedure 23 “grants federal courts ‘broad authority’ to manage class-  
11 action litigation.” *Fox v. Saginaw Cnty.*, 35 F.4th 1042, 1047 (6th Cir. 2022) (citation omitted). In  
12 any class action, each potential class member has a due process right to decide whether to  
13 participate in, object to, or opt out of a Settlement, and to make that decision based on objective,  
14 neutral information. *See id.* at 1049; *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1239,  
15 1243 (N.D. Cal. 2000) (J. Whyte) (“Rule 23 contemplates that putative class members will make  
16 an informed decision about their decision to opt out of a class. The court has a duty to ensure that  
17 all putative class members have a genuine choice . . .”). Providing objective information to  
18 potential class members is thus “crucial” so that they can “take appropriate steps to make certain  
19 their individual interests are protected.” *Erhardt v. Prudential Grp., Inc.*, 629 F.2d 843, 846 (2d  
20 Cir. 1980). Courts are empowered to ensure class members fully understand a settlement and to  
21 protect potential class members from communications that “are factually or legally incomplete,  
22 lack objectivity and neutrality, or contain untruths [which] will surely result in confusion and  
23 adversely affect the administration of justice.” *Id.*

24 The parties agree that publication of the Q & A document will advance the goals of Rule  
25 23 by aiding potential Class Members in making informed decisions regarding the pending  
26 Settlement if approved. *See Georgine v. Amchem Prods., Inc.*, 160 F.R.D. 478, 502 (E.D. Pa. 1995)  
27 (“Rule 23 mandates that class members be exposed to information that will enable them to make  
28

1 an informed, intelligent decision whether to opt out or remain a member of the class”). Many of  
2 the questions in the document aim to clarify important and commonly-raised details about the  
3 terms of the pending Settlement. More truthful and accurate information will increase  
4 transparency and benefit potential Class Members, and the NCAA is uniquely positioned to ensure  
5 widespread access to such information. The interests of due process and justice contemplated  
6 under Federal Rule of Civil Procedure 23 thus counsel in favor of permitting the NCAA to publish  
7 the Q & A document about the pending Settlement.

8 Publication of the Q & A document would also help correct against misimpressions that  
9 may have been created by others. Courts routinely order appropriate remedial measures to protect  
10 potential class members against misleading or confusing communications. *See, e.g.*, Dkt. No. 576  
11 (ordering publication of the Court’s protective order addressing third-party claims filing services  
12 on the Settlement website). For example, in *In re McKesson HBOC, Inc. Securities Litigation*,  
13 another court in this District held that “it is necessary to provide curative notice to solicited class  
14 members, so that they are not confused” and ordered the notice there to be “particularly careful”  
15 in order “to avoid irreparable harm” to putative class members who received “misleading”  
16 materials from law firms soliciting absent class members to pursue a separate action. 126 F. Supp.  
17 2d at 1245–46. Similarly, in *Masonek v. Wells Fargo Bank*, the court from a neighboring district  
18 found that a letter sent to potential class members contained “disconcerting statements about when  
19 and how absent class members must act to protect their rights” and ordered curative notice to be  
20 sent. No. SACV 09–1048, 2009 WL 10672345, at \*2–4 (C.D. Cal. Dec. 21, 2009); *see also Alfred*  
21 *v. Pepperidge Farm, Inc.*, No. LA CV14-07086, 2020 WL 13587900, at \*8 (C.D. Cal. Apr. 14,  
22 2020) (ordering corrective notice). Here, providing truthful and accurate information about the  
23 Settlement will help further correct for the type of misleading third-party communications that  
24 were the subject of this Court’s recent protective order.

### 25 CONCLUSION

26 The parties respectfully request that the Court issue an Order approving publication of the  
27 Q & A document (Exhibit A) and subsequent supplementation and updating of the publication.

1 Dated: December 13, 2024

Respectfully Submitted,

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**SIGNATURE CERTIFICATION**

I, Rakesh N. Kilaru, am the CM/ECF user whose ID and password are being used to file this Joint Motion for Approval of Additional Settlement Class Communications. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: December 13, 2024

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